

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FREE STREAM MEDIA CORP.,

Plaintiff,

v.

ALPHONSO INC., et al.,

Defendants.

Case No. [17-cv-02107-RS](#)**ORDER RE MOTION TO DISMISS**

Pursuant to Civil Local Rule 7-1(b), defendants' motion to dismiss the First Amended Complaint is suitable for disposition without oral argument and the hearing set for August 31, 2017 is vacated. The motion sought dismissal of certain claims for relief under *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2356 (2014), and dismissal of the claims against the individual defendants for a purported failure to alleged sufficient facts to support liability. Plaintiff responded by (1) filing an opposition with respect to the *Alice* issue, and (2) filing a Second Amended Complaint in an attempt to "moot" the challenges to the adequacy of the pleading of the claims against the individuals.<sup>1</sup>

The filing of the Second Amended Complaint has superseded the First Amended

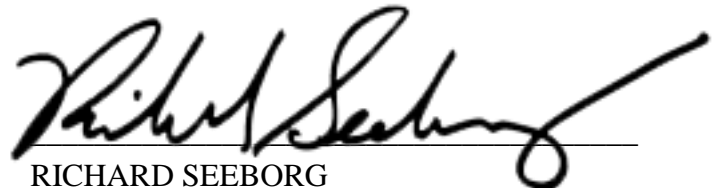
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<sup>1</sup> Plaintiff asserts its right to leave to amend as a matter of course was not previously exhausted. Plaintiff suggests that if its position on that point is rejected, it should be given leave to amend. At this juncture, however, neither a motion for leave to amend nor a challenge to the propriety of plaintiff having filed the Second Amended Complaint without leave, is pending.

1 Complaint. While it might be possible to deem the *Alice* challenge raised by the motion to dismiss  
2 as equally applicable to the Second Amended Complaint, doing so would not serve judicial  
3 efficiency where the adequacy of the amendments as to the individual defendants remains subject  
4 to challenge. Accordingly, the motion to dismiss is denied in its entirety as moot, without  
5 prejudice to defendants' right to challenge the Second Amended Complaint on any or all of the  
6 same grounds. While defendants are also not foreclosed from challenging the filing of the Second  
7 Amended Complaint without leave of court, they are discouraged from doing so if the ultimate  
8 result will only be that leave will be granted under the applicable standards.

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10 **IT IS SO ORDERED.**

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12 Dated: August 14, 2017

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15 RICHARD SEEBORG  
16 United States District Judge  
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